

**DM 05-029**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Violation of Underground Utility Damage Protection Program**

**Order Granting Request of Public Service Company of New Hampshire for  
Opportunity to Show Cause Why Commission Determination of  
Penalties and Damages Should be Changed**

**O R D E R   N O.   24,439**

**February 25, 2005**

On July 24, 2003, Northern Utilities, Inc. (Northern) notified the Safety Division of the New Hampshire Public Utilities Commission (Commission) that one of its work crews had made contact with an underground electrical facility of Public Service Company of New Hampshire (PSNH) at 25 Maple Avenue in Portsmouth, New Hampshire. Northern made its notification pursuant to the Commission's Underground Utility Damage Prevention Program (Dig Safe), as set forth in N.H. Code Admin. Rules Puc Chapter 800. The Director of the Safety Division has been designated to make determinations regarding violations of the DigSafe program. *See, Re Appointment of Commission Staff to Administer Underground Damage Prevention Program*, Order No. 20,942, 78 N.H. PUC 469 (1993).

As recorded on Dig Safe ticket No. 20032909530, Northern reported on July 17, 2003 that it would be conducting excavation work in the area beginning on July 22, 2003. After conducting an investigation on the scene, the Safety Division determined that (1) Northern pierced a 7,200 volt cable with a jackhammer, (2) the Northern crew was preparing to set a riser in order to relocate a gas meter from inside the premises to an outside location, (3) Northern hand dug the area until reaching concrete which it believed were spoils from past construction work, (4) Northern used a jackhammer to remove the concrete, (5) the jackhammer operator felt

an electrical shock and other crew members reported seeing a flash, and (6) the jackhammer operator was taken to a hospital, treated and released. The Safety Division observed markings at the site for both electrical and telecommunications facilities in the premarked area, but that the electrical cable hit by Northern was not marked. The Safety Division further observed that the cable at issue was within a plastic pipe and the plastic pipe was surrounded by a rough layer of concrete.

In accordance with Rule Puc 804.01, PSNH filed a report on August 1, 2003 via Form E-26. The report indicated that the area “was digsafed” and “notification was completed, marked, [but that] damage occurred.”

Members of the Safety Division met with PSNH on October 7, 2003. According to the Safety Division, at the October 7 meeting PSNH (1) presented the Safety Division with a circuit map that showed one primary circuit along Maplewood Avenue, (2) indicated it had given this map to a contractor, On Target, which marked the facilities for PSNH, (3) noted that the circuit map only showed primary facilities and did not show secondary facilities, (4) could not state which electrical facilities were located under the sidewalk in question, and (5) stated that it did not know whether the red facility markings made by On Target adjacent to 25 Maplewood Avenue related to primary or secondary facilities.

On Target submitted a damage investigation report on August 15, 2003 describing the readings it had obtained at the site and noting that PSNH had not provided information about secondary lines and that no detailed plans existed to show how many electric lines were in the dig area. At a later meeting at the site (on October 30, 2003) involving representatives of the Safety Division, PSNH, On Target, Union Water Company and Bob Walsh Custard Insurance

Adjusters, Inc., On Target was able to recreate the signals it believed had been obtained by its locator prior to the incident.

On October 7, 2003, the Safety Division met to discuss the incident with officials from the City of Portsmouth. The City provided maps of the area.

On October 30, 2003, PSNH advised the Safety Division that a search of PSNH's records revealed that the facility hit by Northern was installed some time around 1973.

According to PSNH, it was unable to positively identify the specific conductor hit by Northern.

PSNH submitted a revised Form E-26 on November 12, 2003. According to the revised report,

Dig Safe was notified and On Target responded and marked the area. In addition to PSNH primary cable in this area, there were also 3 other cables of unknown origin. The locator found and marked the 3 unknown cables, however, because the primary cable is very near the foundation of an existing building, he was unable to distinguish the locating signal on the primary cable from that of the foundation, and the primary cable itself was not marked.

The Safety Division visited the site on November 12, 2003 and determined that the electrical conduit hit by Northern was approximately three feet outside the right-of-way depicted on the maps supplied by the City of Portsmouth. Photographs taken by the Safety Division confirm that the conduit was located outside of the right-of-way. The Safety Division also determined that the drawing supplied by PSNH, dated June 17, 1981, did not show the location of the conduit in question in sufficient detail to determine whether the facility was located below the street or the sidewalk.

On January 17, 2004, pursuant to Puc 806.02, the Safety Division issued Notice of Probable Violation (NOPV) No. 03163 to PSNH. The NOPV concluded that the underground facilities of PSNH at 25 Maplewood Avenue in Portsmouth damaged on July 24, 2003 had not been marked and had not been completely marked as required by the statute. Citing the severity

of the consequences of the incident, the Safety Division advised PSNH that upon a determination that the reported violation had, in fact, occurred, the civil penalty assessed in connection with the incident would be \$5,000.

At the request of PSNH pursuant to Puc 807.02, the Safety Division conducted an informal conference on March 29, 2004. Thereafter, the Safety Division issued Notice of Violation (NOV) No. 03163V on June 25, 2004. The Safety Division found PSNH to have violated RSA 374:55, III. Citing the severity of the consequences stemming from the incident, PSNH's insufficient compliance with Dig Safe precautions and the number of prior violations issued to PSNH, the Safety Division imposed the maximum penalty of \$5,000 in accordance with RSA 374:55. Additionally, the Safety Division found PSNH liable for damages pursuant to RSA 375:55., IV and VIII, the cost of repairs pursuant to RSA 374:55, V and expenditures to collect the penalty pursuant to RSA 374:55, VII.

In accordance with Puc 807.05(a)(2), PSNH filed a timely request for a hearing on July 8, 2004. In accordance with Puc 807.06(a), the Commission hereby provides PSNH an opportunity of showing, by a preponderance of the evidence, why the determination made by the Commission's designated staff should be changed.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Public Service Company of New Hampshire appear before the New Hampshire Public Utilities Commission at its offices at 21 South Fruit Street, Concord, New Hampshire at 10:00 a.m. on March 29, 2005 to show cause why the determination made by the Commission's designated staff that Public Service Company of New Hampshire should be held liable for penalties up to \$5,000 and damages pursuant to RSA 375:55, IV and VIII, the cost

of repairs pursuant to RSA 374:55, V and expenditures to collect the penalty pursuant to RSA 374:55, VII should be changed; and it is

**FURTHER ORDERED**, that the Executive Director shall send a copy of this Order by first class mail, postage prepaid, to Northern Utilities, Inc., which should be prepared to appear at the hearing and provide such records and testimony as are pertinent to this matter.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of February, 2005.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Michael D. Harrington  
Commissioner

Attested by:

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Lori A. Normand  
Assistant Secretary